

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2152.05
COMPLAINT INVESTIGATOR:	Joe Bear
DATE OF COMPLAINT:	July 7, 2004
DATE OF REPORT:	August 5, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 8, 2004

**COMPLAINT ISSUES:**

Whether the Kokomo-Center Township Consolidated School Corporation and the Kokomo Area Special Education Cooperative violated:

511 IAC 7-27-5(d)(3) by changing the student's placement without the parent's written consent;

511 IAC 7-27-7(a) by failing to implement the student's last agreed upon individualized education program (IEP) when the parent declined to consent to the change of placement and services proposed by the school at the case conference committee (CCC) meeting on November 3, 2003; and

511 IAC 7-18-2(a) by failing to provide a student with a disability with a free appropriate public education.

**FINDINGS OF FACT:**

1. The Student is fourteen years old and is eligible for special education and related services as a student with a moderate mental disability.
2. On September 18, 2003, the CCC developed an IEP for the period beginning September 18, 2003, and ending September 18, 2004, calling for placement (100%) in a special education classroom for a shortened school day (8:00 a.m. – 1:00 p.m.) with certain specified special education and related services including life skills instruction in community settings, speech/language services, occupational therapy, consultation from the Autism consultant, and special transportation. As of the date of the CCC meeting, the special education teacher provided 40 minutes per day of 1:1 instruction in language arts and math skills during a time when no other students were in the special education classroom, and the Student spent the remainder of the (shortened) school day in an adjacent classroom with a paraprofessional. The CCC agreed to transition the Student "in small increments" into the special education classroom with classmates, beginning with morning calendar and story time. As of the date of the CCC meeting, the Student's special transportation arrangement involved riding a bus alone (no other students on the bus) with a paraprofessional. The CCC agreed to transition the Student toward riding a regular school bus, beginning with riding a bus alone without adult assistance, then riding a bus with adult assistance and other students. The CCC Report/IEP did not establish a definite timetable for the classroom transition or the transportation transition. On September 18, 2003, the Complainant provided written consent for the implementation of the IEP (Agreed-Upon IEP). The specific services in the Agreed-Upon IEP consisted of 5 hours/day of special education services including the following services:
  - a. Community based coaching: 30 minutes/week

- b. Speech/language services: 30 minutes/week (direct and consult)
- c. Occupational therapy: 30 minutes/week
- d. SLP consultation to therapist: 10 minutes/month
- e. Autism consultant: 15 minutes/month
- f. Supports for personnel: autism consultation
- g. Special transportation: two-way/5 times/week

3. On or about October 24, 2003, following the Student's discharge from a three-week period of hospitalization, the School informed the Complainant that the Student was not permitted to return to school until the CCC reconvened.
4. On November 3, 2003, the CCC reconvened. The School's recommendation (First Proposed IEP) was a homebound placement, consisting of 5 hours/week of instruction at school after regular school hours, with the Complainant present, for the 60-instructional-day period beginning November 4, 2003, and ending February 13, 2003. The First Proposed IEP included occupational therapy consultation (15 minutes/week) and transportation to be provided by the Complainant, with mileage reimbursement.
5. The Complainant did not consent to the proposed change of placement. Although the Complainant did not make a definite decision during the CCC meeting, the School was aware of the Complainant's refusal by November 11, 2003, and the Complainant informed the School on November 18, 2003, of the Complainant's specific objections to (a) the amount of instructional time offered, (b) the requirement that the Complainant remain at the school while instruction was provided, and (c) the requirement that the Complainant provide transportation.
6. The School and the Complainant jointly requested special education mediation to resolve the disagreement regarding appropriate services/placement. The Mediation Agreement dated December 9, 2003, set forth the parties' agreements to (a) obtain certain additional and independent evaluations, (b) to reconvene the CCC when the evaluations were completed, and (c) to allow the Student to remain at home until the reconvened CCC, with "attendance regulations...waived." The placement dispute was not resolved through mediation.
7. On February 13, 2004, the CCC reconvened to consider additional evaluations that had been conducted during the preceding month and to review the Student's IEP. The School proposed a revised plan for homebound services (Second Proposed IEP). The Second Proposed IEP called for 7½ hours/week of homebound instruction and allowed the Complainant to choose whether instruction would be provided in the home or at school, but in either case the Complainant was to be present. The Second Proposed IEP also included the School's offer to monitor the Student's behaviors during instructional time, as continued improvement might result in the Student's return to school, as well as the School's offer to investigate a residential placement.
8. The Complainant did not consent to the Second Proposed IEP.
9. It is undisputed that, from October 24, 2003, until the end of the 2003-2004 school year (May 27, 2004), the School provided none of the services required by the Agreed-Upon IEP. It is also undisputed that, because the Complainant did not consent to the change of placement, the School provided none of the services that would have been required by the First or Second Proposed IEPs, except evaluations.
10. The School did not utilize the CCC process to develop a plan for conducting a functional behavioral assessment (to supplement the Staff Surveys completed September 18, 2003) or to review and, if

necessary, modify the Student's existing behavioral intervention plan and its implementation. The School did not conduct or propose to conduct a manifestation determination. At no time after October 23, 2003, did the School suspend, expel, or seek to expel the Student. After not obtaining consent for the Second Proposed IEP, the School did not initiate a second mediation. The School did not initiate a special education due process hearing, under 511 IAC 7-30-3, to resolve the placement dispute. Although the CCC Reports indicate that the School believed that maintaining the Student in the current educational placement was substantially likely to result in injury to others, the School did not request an expedited due process hearing, under 511 IAC 7-29-4, to determine an appropriate placement for the Student. The School did not seek a court order (injunctive relief) to remove the Student from school.

11. As of June 29, 2004, the CCC reached agreement upon extended school year services consisting of 90 minutes of instruction at the high school, four days per week, beginning July 6, 2004, and ending August 11, 2004, with bus transportation provided by the School.

## **CONCLUSIONS:**

1. Findings of Fact #2, #4, #5, #7, #8, and #9 indicate that the School changed the Student's placement without obtaining written parental consent from the Complainant. Although the School sought to abide by the letter of the law by postponing the initiation of homebound services until parental consent was obtained, the School effectively changed the Student's placement by discontinuing services altogether. Therefore, a violation of 511 IAC 7-27-5(d)(3) occurred.
2. Findings of Fact #2, #3, and #9 indicate that, from October 24, 2003 through the end of the 2003-2004 school year, the School did not provide the services required by the Agreed-Upon IEP. Until parental consent for a change of placement is obtained, an agreed-upon IEP must be implemented as written. Therefore, a violation of 511 IAC 27-7-7(a) occurred by failing to implement the Student's last agreed upon IEP when the parent declined consent to the proposed change of placement and services.
3. Findings of Fact #3, #6, #9, and #11 indicate that from October 23, 2003, until the end of the 2003-2004 school year, the School failed and refused to provide educational services to the Student. In addition, Findings of Fact #4 and #7 indicate that the Proposed IEPs were not offered at no cost, as the Complainant was required to be in attendance without compensation, and Findings of Fact #4 and #5 indicate that the First Proposed IEP was not in compliance with 511 IAC 7-21-7, as the First Proposed IEP required a parent to provide transportation when the parent was not willing to do so. Further, Finding of Fact #10 indicates that, faced with a disagreement about appropriate services and placement, the School failed to utilize any of the procedures available to safeguard the Student's rights. Finally, Finding of Fact #6 indicates that the School failed to fulfill its obligations under the Compulsory School Attendance Law, IC 20-8.1-3-17(d) and IC 20-8.1-3-36, by "waiving" the Student's attendance. Whether through the case conference process or mediation, schools cannot "waive" the requirements of compulsory school attendance or otherwise refuse to educate a student who has legal settlement within the attendance area of the school corporation. Therefore, a violation of 511 IAC 7-18-2(a) occurred by failing to provide a student with a disability a free appropriate public education.

**The Department of Education, Division of Exceptional Learners, requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

## **CORRECTIVE ACTIONS:**

The Kokomo-Center Township Consolidated School Corporation and the Kokomo Area Special Education Cooperative shall:

1. Not later than September 10, 2004, reconvene the Student's case conference committee to:
  - a. Develop a detailed plan for the School's provision of 646 hours of compensatory services including, but not limited to, 14.5 hours of occupational therapy services and 14.5 hours of speech/language services. The services shall be provided by appropriately licensed personnel. If a paraprofessional assists in providing instructional services, the paraprofessional is to work under the direct supervision of licensed teacher(s).
  - b. Determine the Student's IEP and placement that will be in effect at the beginning of the 2004-2005 school year.

If agreement is not reached, the School shall initiate a due process hearing within ten days after the CCC meeting. Mediation is also available as an option.

Documentation of compliance (consisting of an agreed Case Conference Report and IEP, or a Request for Hearing) shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by September 17, 2004.

2. Not later than September 10, 2004, inform special education personnel, superintendents, and principals, by memorandum or through inservice training, that (a) when a parent disagrees with a proposed change of placement, the student's IEP that is in effect must be implemented until the placement dispute is resolved; and (b) the School may not deny all educational services or waive attendance requirements, either through the case conference process or mediation.

Documentation of compliance (consisting of the memorandum with a complete list of addressees, or written materials utilized in inservice training with a complete list of attendees) shall be submitted to the Indiana Department of Education, Division of Exceptional Learners, by September 17, 2004.